IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.5793 of 2007
Date of decision: 12.7.2007

Aayush Gupta.

-----Petitioner

Vs.

Panjab University.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. V.K. Jindal, Advocate
for the petitioner.

Mr. B.L. Gupta, Advocate
for respondent-University.

Adarsh Kumar Goel, J.

This petition seeks a direction for refund of fee of an amount Rs.57,933/- along with interest @ 18 %.

Case of the petitioner is that he applied for admission to Five Years' B.A. L.L.B. (Honours) Integrated Course in the year 2005-06 with Department of Law of the respondent-University. The petitioner qualified the Common Entrance Test. Since the petitioner could not get admission in General category, he opted for NRI quota and deposited the fee being amount of Rs.87,500/-, Rs.24,063/- and Rs.14,410/-. In

the second counselling, he was shifted to General category and he vacated the NRI seat, to which, another student was admitted, who paid the same amount. After conversion of NRI quota to General category, the petitioner deposited the prescribed amounts, but he had not been refunded the excess payment made by him being Rs.57,933/-. On 11.03.2006, rules were notified, which provided refund of fee on conversion of NRI quota seat to General category seat. The petitioner, accordingly, applied for refund, to which no reply was received. In the reply filed, the stand taken is that claim for refund could be entertained only upto 31st October of the year of admission, as per Note-III at Page xxxv of Hand Book of Information and Rules for Admission-2005. Only objection raised to the refund of fee is that application of the petitioner was beyond the time-limit and he applied for refund 1 year and 5 months after the expiry of the last date, prescribed in the Rules.

Only question for consideration is whether once the petitioner was, on merits, entitled to refund of fee, the same could be denied only on the ground that he did not apply within the time-limit prescribed in the Rules.

In the petition, para 23 of the Rules, incorporated in the appendix to the prospectus, has been quoted, which is to the following effect:-

> "If a student originally gets admission in a University Department/Institute/Regional Centre under Foreign/PIO./NRI/NRI sponsored/Industry sponsored

> category or in a General Category and leaves the same for joining another course in the same department or another department/Institute/Regional Centre in the Punjab University during subsequent counselling of General/Reserved Category, his/her tuition fee shall be adjusted only in the same session as per the existing University rules. If there is any excess amount still left after the fee adjustment i.e. the balance sum if any shall be refunded after deduction of Rs.500/- (Rs.Five hundred only) as Administrative Charges to the sponsor of the candidate / or to the candidate as the case may be. For this purpose, the candidate must make an application on the prescribed form for refund of the tuition fee within fifteen days from the date of shifting to another department through the Head of the Department to the Assistant Registrar-II.

In the written statement, reliance has been placed on Note-III at Page xxxv of Hand Book of Information and Rules for Admission-2005 to the following effect:-

> "(v) The claim for the refund of fee as mentioned above shall be entertained up to 31st October of the year of admission only."

Rule relied upon on behalf of the University is apparently framed in exercise of power to lay down procedure for admission. Such a rule cannot be intended to enable forfeiture of fee of a student, which is held as trust money to be adjusted in case his NRI seat is converted into General seat, as per procedure laid down. Time limit laid down therein for claiming the refund has to be read as directory and not

mandatory. The rule making authority does not have sovereign power of affecting rights of a candidate beyond regulating the procedure for admission. Nature of Subordinate Legislation is well-known and it will be worthwhile to refer to the law on the point laid down by the Hon'ble Supreme Court in **State of TN and another v. P.Krishnamurthy and others,** (2006) 4 SCC 517:

> "16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring invalidity.
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> 17. In Indian Express Newspapers (Bombay) (P) Limited v. Union of India, (1985) 1 SCC 641, this court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p.689, para 75)
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> > "75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the

> grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

18. In Supreme Court Employees' Welfare Assn. v. UOI, (1989) 4 SCC 187, this Court held that the validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fairminded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or violative of the general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.

19. In Shri Sitaram sugar Co. Limited v. UOI, (1990) 3 SCC 223, a Constitution Bench of this Court reiterated : (SCC pp.251-52, para 47)

> "47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of amterial facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution

> and other laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. See Leila Mourning v. Family Publications Service, 411 US 356. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires' : per Lord Russel of Killowen, C.J. In Kruse v. Johnson, (1898) 2 QB 91."

20. In St.John's Teachers Training Institute v. Regional Director, NCTE, (2003) 3 SCC 321, this Court explained the scope and purpose of delegated legislation thus: (SCC p.331, para 10)

> "10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness, when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation

> permits utilisation of experience and consultation with interests affected by the pacifical operation of statutes."

We may also refer to the observations of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*** AIR 1986 SUPREME COURT 1571, wherein scope of Article 14 of the Constitution with reference to rights of persons with unequal bargaining power was considered and it was observed:-

> "The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that, the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power."

Defence pleaded by the University to deny refund of fee to the petitioner is not fair and cannot be accepted. The rule to deny right to claim refund sought within reasonable time cannot be strictly applied and refund cannot be denied without showing valid justification, which in the present case has not been shown. It has not been shown that

any loss or prejudice has been suffered by the University. Fee from another candidate has been received. Mere expiry of date, by which making of application has been laid down, cannot be treated as a valid ground to deny refund, in the facts of the present case.

In view of above, we are of the view that the petitioner is entitled to refund of the amount of fee paid i.e. Rs.57,933/-. We direct the respondent-University to refund/adjust the said amount within three months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

July 12, 2007 **(AJAI LAMBA)**
ashwani **JUDGE**